

§ 1953.40

provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedure provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced for rejection of the change or for failure to submit a change, in accordance with the procedures in §1902.17 of this chapter on rejection of State plans.

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to see whether it meets the objections set out in the evaluation report as well as the requirements for an “at least as effective” State program. The decision shall reflect the Assistant Secretary’s determination as to whether the supplement meets those requirements.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5629, Feb. 14, 1974; 43 FR 51761, Nov. 7, 1978]

Subpart E—State Initiated Change Supplements

§ 1953.40 Definitions.

A State initiated change would be any change to the State plan other than those defined in subparts B, C, and D of this part. Examples of State initiated changes include actions which would effect Federal funding under section 23(g) of the Act such as an increase or decrease in personnel, or coverage of additional issues under the plan; and also legislative, regulatory or administrative policy changes which impact on the effectiveness of the State program including a reassignment of enforcement personnel or legislation restricting coverage under the

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plan. Such policy changes would not ordinarily include court cases or administrative decisions in individual cases except as they are reflected in State legislative, regulatory, or administrative policy changes.

§ 1953.41 Submission and consideration.

(a) A State initiated change supplement is required whenever the State takes with regard to its plan an action not otherwise covered by this part that would impact on the effectiveness of the State program. The State shall notify the Regional Administrator of the change and submit the required supplement within 30 days after notifying the Regional Administrator if the change involves legislative amendments or affects Federal funding under section 23(g) of the Act. Other State initiated changes may be submitted at any time generally not to exceed 6 months after the change occurred. If the State fails to notify the Regional Administrator of the change or fails to submit the required supplement within 30 days after notification, the Regional Administrator shall notify the State that a supplement is required and set a time period for submission of the supplement generally not to exceed 15 days.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator. The supplement shall contain the change with related documentation on the impact of the change on the State plan.

(2) The State may also show cause why a supplement should not be required on the grounds that it does not impact on the effectiveness of the State program and that additional Federal funding is not required. The procedures in this subpart would be applicable thereto.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30

days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to submit the change, in accordance with the procedures in §1902.17 of this chapter on rejection of state plans.

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect the Assistant Secretary's determination as to whether the change meets that requirement.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5630, Feb. 14, 1974]

Subpart F—Advisory Opinions

§ 1953.50 Definitions.

(a) An authorized representative of a State agency or agencies designated under section 18(c)(1) to administer a plan may request an advisory opinion from the Regional Administrator. These opinions are designed to provide the State with a basis for implementing a change. For example, prior to publication of standards, the State may want a preliminary opinion that the standards are at least as effective as the Federal standards or that a regulation that will be proposed for public comment in the State appears to meet

the requirements of section 18 of the Act and part 1902.

(b) A request for an advisory opinion ordinarily will be considered inappropriate when extensive investigation or evaluation would be necessary. A requesting State will be informed if the same or substantially similar course of action is under review for an advisory opinion in another State or if it has been the subject of a current evaluation, approval, or disapproval proceeding by the Assistant Secretary.

§ 1953.51 Submission and consideration.

(a) The request for advice should be submitted in writing to the Regional Administrator in whose Region the State is located and should include full and complete information regarding the proposed course of action. Conferences with members of the Regional and National office staff may be held before and after submittal of the request and submission of additional information may be required.

(b)(1) On the basis of the facts submitted, as well as other information available to him, including information from interested persons where relevant, the Regional Administrator, after appropriate consultation with the Office of Federal and State Operations and the Office of the Solicitor will provide an advisory opinion to the State and may take such other action as may be appropriate.

(2) Because of the possibility that the subject matter of an advisory opinion may change during promulgation by the State as a final change, and in order to provide for public comment on the final change, these opinions cannot bind the Assistant Secretary in making his final decision following the procedures specified in the appropriate subparts of this part. If the Assistant Secretary decides to revoke or rescind the advisory opinion, notice of such rescission or revocation will be given to the requesting State so that it may discontinue the course of action taken. The Assistant Secretary will not proceed against the requesting State with respect to any action taken in good faith reliance upon the advice given under this subpart, where all relevant